
Race discrimination: Instruction not to speak native language at work

Published 10 February 2016

In this case, the EAT decided that an employer did not directly discriminate when it instructed a Russian employee not to speak Russian at work.

The facts

Mrs Kelly, who is Russian, was employed in a testing laboratory that had been targeted by the animal rights movement. In the early weeks of her employment, Mrs Kelly's manager thought that she had been acting strangely - using her mobile telephone at work, disappearing into the bathroom with her telephone for long periods and speaking on her telephone in Russian. He became concerned she might be an animal rights activist who had infiltrated the company. Because of this concern, he instructed her not to speak Russian at work, because he thought it was important that conversations in the workplace could be understood by English speaking managers. She later resigned, and claimed she had suffered direct race discrimination. The tribunal found (and the EAT agreed) that the manager would have (and, in fact, did) give the same instruction to other employees speaking a language other than English.

What does this mean for employers?

In this case, the employer was found not to have discriminated against Mrs Kelly because it didn't treat her differently than it treated, or would treat comparable employees. However, employers should be very careful if they are trying to prohibit or limit the use of any language in the workplace, as this may well be discriminatory. It is usually safer to tell all employees that they should speak English in the workplace, in order to create an inclusive environment, rather than prohibit employees from speaking specific languages. If all the employees are given the same instruction, the relevant claim is indirect, rather than direct, discrimination, which means the employer will have the opportunity to justify the instruction as being a proportionate means of achieving a legitimate aim.

Kelly v Covance Laboratories Ltd UKEAT/0186/15, 20 October 2015

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